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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANTHONY J. WASILEWSKI and HOWARD G. PINDER

Appeal 2010-005506
Application 10/602,987
Technology Center 2400

Before MARC S. HOFF, JAMES R. HUGHES, and
GREGORY J. GONSALVES, *Administrative Patent Judges*.

GONSALVES, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the final rejection of claims 1-19 (App. Br. 2). We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

The Invention

Exemplary Claim 1 follows:

1. A method for providing a plurality of programs in a conditional access system, the method comprising the steps of:

using a packet identifier to select for encryption a portion of each of a plurality of digital bit streams from a transport stream;

encrypting a portion of each of the plurality of digital bit streams;

combining the encrypted portion and the unencrypted portion with the transport stream; and

transmitting the combined stream.

The Examiner rejected claims 1-19 under 35 U.S.C. § 102(e) as being anticipated by Candelore (U.S. 7,376,233 B2, May 20, 2008, filed Oct. 18, 2002) (Ans. 3-6).

ISSUE

Appellants' responses to the Examiner's positions present the following issue:

Did the Examiner err in ruling that Appellants are not entitled to claim priority to the parent continuation application (Application No. 09/930,901 filed on 16 August 2001, "the '901 continuation application") because the '901 continuation application fails to provide adequate support for "*using a packet identifier to select for encryption a portion of each of a plurality of*

digital bit streams from a transport stream” and “combining the encrypted portion and unencrypted portion with the transport stream,” as recited in independent claim 1 and as similarly recited in independent claim 13?

ANALYSIS

The Examiner found that Candelore is prior art to Appellants’ present application because Appellants are not entitled to claim priority to the ’901 continuation application because it fails to provide adequate support for the claim limitations emphasized above (Ans. 7). Appellants argue that the ’901 continuation application does have support for these claim limitations because “page 27 of the specification (lines 19-29), used in conjunction with Figure 7, describes detailed mechanisms of MPEG transport, and in particular, the fact that ‘any part or all of MPEG transport stream’ may be encrypted” (App. Br. 5).¹ We agree with Appellants. Figure 7 of the Specification shows the packets in a transport stream for various subcategories including video (705(a)), audio (705(b)), EMM (705(d)), ECM (705(g)), etc. The packets in a subcategory can be considered to form a digital stream. Moreover, the Specification states that “[a]ny part or all of MPEG-2 transport stream 701 may be encrypted, except that packet headers and adaptation fields are never encrypted” (p. 27, ll. 26-27). In other words, the Specification discloses that some of the portions of the transport stream shown in FIG. 7 may be encrypted while others may not be encrypted.

¹ Although Appellants’ Appeal Brief refer to the specification of the present application, they also effectively refer to the specification of the ’901 continuation application because the specifications of the two applications are the same. We also cite to the specification of the present application in this Opinion to be consistent with the Appeal Brief.

Accordingly, we find that the Examiner erred in finding that the Specification does not provide support for the claims. Thus, we find that — contrary to the Examiner’s finding — Appellants are entitled to claim priority to the ’901 continuation application and therefore, that Candelore is not prior art. For these reasons, we will not sustain the Examiner’s rejection of claims 1-19 as anticipated by Candelore.

DECISION

We reverse the Examiner’s decision rejecting claims 1-19 as anticipated by Candelore.

REVERSED

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